

Construction Stormwater Management: Current Permit Requirements

The New York State Department of Environmental Conservation (NYS DEC) SPDES General Permit for Stormwater Discharges from Construction Activity known as GP-0-15-002 (the Permit) went into effect on January 29, 2015 and **will expire on January 28, 2020**. NYS DEC published a draft construction permit for comment in July 2019. DEC is currently making changes to the draft permit in response to comments received. A full response comment document will also be released. DEC intends to publish the new permit by the 1/28/20 expiration date.

A summary of the *proposed* permit changes can be found [here](#). Pending release of the revised permit, current regulations regarding the discharge of stormwater to surface waters of the State from construction activities remain in effect. The following pages summarize some key requirements of the current permit.

Before commencing construction activity, the owner/operator of a construction project that will involve soil disturbance of one or more acres must obtain Permit coverage. The purpose of the Permit is to control construction site discharges as necessary to meet applicable water quality standards. Permit compliance also provides protection for other resources including:

- Habitat/Natural Areas
- Environmentally Sensitive Areas
- Trees
- Permeable Soils
- Future Stormwater Management Areas
- Infrastructure/Structures
- History

In order to gain coverage under the Permit, an owner/operator must:

- Develop a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements in the permit
- Submit a completed Notice of Intent (NOI) to the NYS DEC
- Projects subject to MS4 regulation must submit a signed MS4 SWPPP Acceptance Form along with their NOI. With some exceptions, an owner/operator of a construction project within the boundaries of an MS4 is required to have his/her SWPPP reviewed and accepted by the MS4 prior to submitting their NOI to NYS DEC. Consult the [Stormwater Interactive Map](#) to determine whether your project is within an MS4. MS4 jurisdiction for SWPPP review extends to the full municipal boundary, therefore if your project is located in a regulated MS4 but outside of the designated MS4 area, you should contact the municipal office to determine whether you need to submit your SWPPP for approval.

All construction sites require:

- Stabilized Construction Access
- Site Pollution Prevention
- Silt Fence
- Soil Restoration
- Seeding and Mulching

Most Construction sites need:

- Existing vegetation protection
- Concrete Truck Washout
- Check Dams
- Rock Outlet Protection
- Sediment Trap/Basin
- Winter Stabilization

NOTICE OF INTENT

The Notice of Intent for construction activity can be completed online through the NYSDEC [eBusinessForms](#) portal. Users must register with [NY.GovOnlineServices](#) in order to use the system. User guides and help on registering for the portal are also available on the portal webpage.

Beginning December 21, 2020, the owner or operator must submit the NOI electronically using the Department's online NOI.

Noncompliance Penalties

The NYS DEC expects that compliance with the Permit will control discharges from construction sites that are necessary to applicable water quality standards. A violation will occur if there is a discharge from the site that causes or contributes to any of the following:

- An increase in turbidity that causes a substantial visible contrast to natural conditions.
- An increase in suspended, colloidal or settleable solids that cause deposition or impairs the waters for their best usages.
- Residue from oil and floating substances, visible oil film or globules of grease.

You're probably aware that a site owner/operator can be fined up to \$37,500 per day for failure to comply with their Stormwater Pollution Prevention Plan and the terms of the Stormwater General Construction Permit. However, there are other penalties and actions possible that may present problems that are more immediate, and perhaps less easily foreseeable. In many cases, if a site is found to be noncompliant to the extent that it presents a potential threat to local water resources, the municipality or NYSDEC can place a stop work order on all activity other than that necessary to comply with the permit until the problem is corrected. The result is often substantial loss of time and money for everyone involved.

If a Water Quality Standards violation occurs (i.e. a visible contrast to natural conditions in the receiving water body, such as turbidity or muddy character of the water caused by introduction of sediment or other pollutants from a construction site), any or all of the above penalties may apply. A Water Quality Standards violation is a contravention of the NYS Environmental Conservation Law, and is therefore treated as a separate infraction in addition to any violation of the terms of GP-0-15-002. For Water Quality Standards violations or other significant violations, the NYSDEC may also elect to pursue a consent order **against an owner/operator and/or contractor**, requiring that certain actions be taken **at the owner or contractor's expense** to correct identified issues. Such an order may be enacted in place of, or in addition to fines; in either case, it can rapidly become expensive and derail the progress of a project.



Owner/Operator inspections are the first line of defense against discharge violations. The role of the self-inspector is to verify that the site is complying with permit requirements. The self-inspector verifies that the SWPPP is being properly implemented. The inspection process provides an early opportunity to detect and address potential problems which left unchecked may cause or contribute to a water quality violation. The self-inspector also documents SWPPP implementation so regulators can review implementation activities. It is not the role of the self-inspector to report directly to regulatory authorities. On-site spills are the exception. All spills must be reported to DEC unless the spill is less than five (5) gallons, is contained and does not reach state waters, and is cleaned up within two (2) hours.

Onsite inspections should address the following key elements: access points, outfalls, practices/site management, housekeeping, paperwork, erosion, sedimentation, discharge violations, and protected resources.

NYS Stormwater Management Design Manual

The New York State Stormwater Management Design Manual provides designers with a general overview on how to size, design, select, and locate stormwater management practices at a development site to comply with State stormwater performance standards. The manual is a key component of the Phase II State Pollution Discharge Elimination System (SPDES) general permit for stormwater runoff from construction activities from all sizes of disturbance.

In 2015, the Design Manual was updated to include pond safety provisions in Chapter 6, updated isohyet maps in Chapter 4, and clarification of sizing criteria in Chapters 3, 4, 9, and 10 to be consistent with the Construction General Permit (GP-0-15-002). The 2015 Design Manual can be downloaded from the DEC website at <http://www.dec.ny.gov/chemical/29072.html>

The previous Design Manual (2010) introduced the use of green infrastructure instead of traditional ponds and closed drainage systems. At the time, green infrastructure was a poorly understood concept that was more contested than embraced. Since that time, green infrastructure has proven to be effective in reducing runoff and protecting water quality. Green infrastructure practices are increasingly more common, and as a result, better understood.

The principle behind green infrastructure is threefold:

- 1) Reduce the amount of stormwater runoff generated by preserving natural features and resources**
- 2) Reduce the amount of runoff generated by decreasing impervious surface**
- 3) *Treat runoff near its source in many small volumes, using practices designed to mimic natural features, rather than in one or a few large volumes via engineered structures.***

Green infrastructure reduces the margin for error in disturbing or clearing natural features such as trees, vegetation, existing drainage patterns, and resource buffer areas because these elements are now considered functioning parts of the Stormwater Pollution Prevention Plan (SWPPP) rather than simply part of the landscape.

On green infrastructure projects, grading often allows runoff water to be dispersed to vegetated areas rather than directed to a conveyance structure or traditional stormwater management practice. Rather than cutting and filling a site to accommodate the project, it is necessary to work with existing landscape topography and allow the natural conditions to drive the form and layout of the project.



Owner/Operator Construction Site Inspections

There are three types of inspections that can take place on active construction sites – Owner/Operator’s Site inspections, DEC Compliance Inspection, and Municipal Site Inspections (MS4).

The owner/operator’s inspections must be conducted at least once every 7 days on sites where less than 5 acres of soil are exposed at one time. Additionally, contractors should be inspecting erosion & sediment control measures on a daily basis. Daily maintenance of erosion & sediment control measures is important and prompt attention to maintenance and repair is critical. Storm events can compromise erosion & sediment controls and maintenance may be required on a more urgent basis than the weekly inspection schedule.

The 4-hour contractor certification training is designed to ensure that contractors working on construction sites have the necessary knowledge to implement practices and techniques that prevent introduction of sediment and other pollutants to bodies of water. All contractors responsible for any installation or maintenance of erosion and sediment control practices must have received this training **within the past three years** in order to perform work on a construction site. Additionally, GP-0-15-002 has been updated to specify that the “Trained Contractor” shall perform the required maintenance inspections of the erosion and sediment controls being used on the site. These inspections were previously the responsibility of a “Qualified Inspector” (i.e. P.E, L.A., CSPEC).

The Permit specifies that a “Trained Contractor” shall perform the required maintenance inspection of the erosion and sediment controls being used on site. A trained contractor is an employee of the contracting/construction company that has received 4-hours of DEC endorsed training in proper erosion and sediment control principles from a Soil & Water Conservation District. After the initial training, trained contractors must repeat the training every three years. A trained contractor can also be a licensed Professional Engineer (PE), Certified Professional in Erosion & Sediment Control (CPESC), Registered Landscape Architect (RLA) or someone working under the direct supervision of a licensed Professional Engineer or Landscape Architect provided they have received 4-hours of DEC endorsed training in erosion & sediment control. The trained contractor is responsible for the day-to-day implementation of the SWPPP.

The inspection report must be reviewed with the owner and kept on site. The owner should promptly give all SWPPP implementation contractors a copy of inspection reports and review all necessary repairs and required changes. A Site Log Book must include the construction inspection reports for the duration of the project, signed contractor certification statements, and any updates to the SWPPP that may occur during construction.

For projects that require soil disturbance of greater than 5 acres at any one time, the owner/operator must receive prior written authorization from the DEC, or in the case when the project is under the jurisdiction of a regulated traditional land use MS4, the MS4. At a minimum, in order to be authorized to disturb greater than 5 acres of soil, the owner/operator must have a “Qualified Inspector” conduct at least 2 inspections every 7 days for as long as greater than 5 acres of soil remain disturbed. A qualified inspector is a person knowledgeable in the principles and practices of erosion and sediment control, such as a PE, CPESC, or RLA. Qualified inspectors may also be someone working under the direct supervision of a PE, CPESC, or RLA provided that person has received DEC endorsed training in the principles and practices of erosion and sediment control.

For construction sites that discharge directly to a 303d) listed segment, or is located in the Onondaga Lake watershed, the owner/operator must have a qualified inspector conduct at least 2 inspections every 7 days. The 2 inspections must be separated by a minimum of 2 calendar days.

Need Training?

At all times, at least one contractor onsite must have in their possession a current certification card showing that they have completed the required training within the last three years. An MS4 inspector or state official can require an individual or firm to stop work and leave the site if they are not properly certified.

The 4-hour Erosion & Sediment Control training course is conducted by the Onondaga County Soil and Water Conservation District and other SWCDs around the state. The Onondaga County SWCD 4-hour erosion and sediment control courses are held at the Syracuse Builders Exchange. The next course is scheduled for November 6th, 2019. The full schedule can be viewed at the [Syracuse Builders Exchange website](#). The Onondaga County SWCD will also schedule private courses for groups of 15 – 20. To schedule a private class, call (315) 457-0325.I

Pre-Construction Meetings: Are They Worth My Time?

A pre-construction meeting provides an opportunity for all parties involved in the implementation and enforcement of a Stormwater Pollution Prevention Plan to discuss the progression, timeline, and logistics of construction, and to identify any potential issues before they arise. Attendees typically walk the site in order to identify resource areas to be protected and to discuss the proposed locations of structures and practices. Pre-construction meetings are valuable in developing a common understanding of expectations between representatives of the project owner and the jurisdictional MS4. Having a mutual understanding from the beginning of the project prevents problems and miscommunication along the way, thereby increasing the efficiency and ease of SWPPP implementation.

Pre-construction meetings typically are attended by the project owner, the owner's technical representative, the lead contractor, the qualified site inspector, the Code Enforcement Officer and/or Director of Planning, the municipal engineer, and preferably the Highway Superintendent. Subcontractors with major roles in SWPPP implementation should also attend.

The value of attending a pre-construction meeting for any project inside of the Onondaga Lake watershed may be even greater due to the enhanced phosphorus removal requirements for all new development projects.



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